



BRITISH COLUMBIA
POLICE
COMPLAINT
COMMISSIONER

2000
ANNUAL REPORT

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POLICE COMPLAINT
COMMISSIONER

British Columbia
Canada

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Speaker of the Legislative Assembly
Room 207, Parliament buildings
Victoria, B.C.
V8V 1X4

Dear Honourable Speaker:

It is with pleasure that I present to you and to the members of the Legislative Assembly my 2000 annual Report.

Yours truly,

Don E. Morrison
Police Complaint Commissioner

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JUN 08 2001



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Commissioner's Message

The British Columbia legislature has provided an oversight model which both responds to complaints and, of equal importance, provides for a preventative approach for the Police Complaint Commissioner in the powers and duties set out in Section 50 of the *Police Act* relating to the complaint system.

This is consistent with the dual approach recommended by many experts. For example, Dr. Colleen Lewis of Monash University, Australia, wrote:

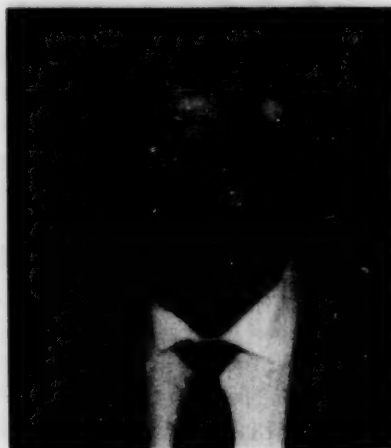
"Civilian oversight cannot be limited to reacting after a complaint about police conduct has occurred. ... [reactive powers] are a necessary, but are not a sufficient ingredient in the effective oversight of complaints against police. [These models] need to be extended to include proactive, preventative issues. ... This shift in focus could be the first step toward building a new relationship between the oversight body and police, one based, in part, on partnership and consensus rather than conflict."¹

Many of the powers were among those recommended by Justice W. Oppal in his report, *Closing the Gap: Policing and the Community*, and were adopted by the British Columbia Legislature in the *Police Act* of 1998.

In 2000, the Office of the Police Complaint Commissioner (while not ignoring its reactive role) focused on its proactive role, which is designed to help prevent incidents between police and complainants and, where incidents do occur, to improve the police complaint process.

Steps taken this year include:

- ♦ Involving all municipal police departments and representatives from the British Columbia Association of Police Chiefs, police unions, and representatives of the professional standards and internal investigators to create Guidelines and Practice Directives to ensure fairness and equity in the processing of complaints. There are now 3 guidelines and 11 practice



¹ Dr. Colleen Lewis, *Complaints Against Police: The Politics Of Reform* (Sept. 1999) pp. 82, 86. See also David H. Bayley, *Police Brutality and Civilian Oversight*, Occasional Paper of IACOLE, 2nd issue; and Douglas W. Perez, *Common Sense About Police Review* (1994), Temple University Press.

directives that address issues such as procedural fairness and directives for taking statements of police officers.

- ♦ Retaining the services of an ethicist to provide opinions on issues of police conduct. This process was instituted to help police carry out their responsibilities.
- ♦ Providing educational opportunities for police officers and management, including:
 - An internal investigation and *Police Act* course, 27-30 March 2000
 - A legal issues seminar, 31 March 2000
 - A *Police Act* course for supervisors, 6-7 June 2000
 - The *Police Act* - A symposium for supervisors, 22 November 2000
 - Hot issues in police internal affairs - A symposium, 23 November 2000
 - A workshop on Labour Code jurisprudence and the investigation of internal complaints for internal investigators and union agents, 24 November 2000.

This educational initiative was well received and will be continued.

As president of the Canadian Association for Civilian Oversight of Law Enforcement (CACOLE), I am working to strengthen the network of Canadian oversight bodies to identify common problems and solutions. This includes working with police to find solutions to these problems. This year the focus of the conference in Winnipeg was "Forces That Affect Police." At this conference, police participation was at its highest since the inception of CACOLE in 1996 and reflects the proactive approach we are taking in British Columbia. The 2001 joint CACOLE/ IACOLE conference will build on this base and will also enhance international links.

Policing Issues

This year I gave presentations to promote information exchanges and public education on some of the difficult issues facing police:

- ♦ "The Challenges of Disclosure of Police Records after *Scaduto*"² at the Canadian Association of Police Boards' Annual Conference (August 2000).
- ♦ "The Impact of Torts and Human Rights Litigation on Police" at the CACOLE annual conference (September 2000).
- ♦ "The Transition of Police to the Professional Model and the Role of Civilian Oversight," the keynote address at the ninth annual conference on Law Enforcement and Ethics (October 2000).

² *R. v. Scaduto*, [1999] O.J. 1906. See also *R. v. Paciorkowski*, [2000] O.J. 5261; *R. v. Fudge*, [1999] O.J. 3121; *R. v. Altunamaz*, [1999] O.J. 2262; and *Regina (City) Police Service v. McKay*, (1999) 187 Sask. R. 294.

- ♦ "Models of Civilian Oversight of Police in Canada" at an FBI course on Integrity Assurance and Corruption Investigation at the International Law Enforcement Academy (January 2001) (while on annual leave). Police from China, Hong Kong, the Philippines, Viet Nam, Cambodia, Laos, Thailand, Malaysia, and Indonesia attended. There were many questions about the B.C. model and on ways to insulate investigations from political interference.

Research

An analysis of the complaint files suggests areas of research that are part of the preventative model that the experts write about.

Under Section 50(2)(b) of the *Police Act*, the Police Complaint Commissioner can engage in or commission research on any matter relating to the purposes of the complaint process. Gathering data on complaints and analyzing this data will lead to strategies to reduce the number of future complaints.

Ethics and Integrity

A growing number of police officers are coming forward with concerns about the conduct of their colleagues. The issues they raise often touch on ethics and integrity. It is a sign that the police are embracing the evolution to a "professional model" as the way to deal with policing problems in the twenty-first century. The International Association of Police Chiefs report, *Ethics Training in Law Enforcement*, which is available on their web site, speaks to a crucial need to constantly reinforce ethics:³

"Ethics must be viewed as more than a "Band-Aid" to be utilized after a scandal has arisen. Instead, personnel at all levels (and at all career stages) must have the opportunity to be reminded of these issues, and to have their decision-making skills refreshed and reinforced. ... The ultimate solution for officer misconduct is for ethics and integrity to become ingrained throughout every aspect of an organization."

Many of the recommendations in the report are beyond the mandate of the Office of the Police Complaint Commissioner. However, I have retained an ethicist who has given ethical opinions on various police issues. These opinions are available on the OPCC web site. I hope that obtaining ethical opinions will help the police as they continue to evolve. Both the Canadian Association of Chiefs of Police and the B.C. Association of Chiefs of Police have committees whose task is to produce a code of ethics for police officers.

In 2001, the Office of the Police Complaint Commissioner will provide financial support for an initiative to establish an ethics counsellor, independent from the

³ Recommendation V of *Ethics Training In Law Enforcement* (1997), A report by the Ethics Training Subcommittee of the IACP Ad Hoc Committee on Police Image and Ethics.

Office of the Police Complaint Commissioner, who will be available to provide advice on a confidential basis to police officers who have identified an ethical problem in the work they do. The counsellor will be a senior practising police officer and will be able to respond to queries, either written or by phone.

Court Challenges

As I said last year in my message, this oversight system will be tested and there will be adjustments. There have been a number of court challenges to the jurisdiction of the Police Complaint Commissioner to order public hearings; they are not yet concluded. The public hearing is not seen as "just an exercise." However, I am very disappointed with the amount of time these challenges are taking. Justice Oppal, in his Report, had hoped the new system would remedy this problem in the old complaint system. Apparently it has not. "Justice delayed is justice denied" for all parties. Some might question whether this attempt to delay is a tactic or whether it truly is to determine the correct mandate of the Police Complaint Commissioner. Most police officers would rather have these matters resolved on their merits and not delayed by technicalities. There is no reasonable explanation for the lengthy time delays. The high legal costs of the "public hearing" initiatives raise a further concern. I will be making strong recommendations to the special committee of the Legislature (which is to begin a review of this legislation by 1 July 2001) on ways to remedy these concerns.

Conclusion

When all is said and done, the model of civilian oversight must truly address the question raised by Decimus Junivus Juvenalis:

Quis Custodiet ipsos Custodes?

(Who should guard the guardians?)

This model presented by our legislature, a model that is both reactive and proactive, can answer that question with the presence of this office. With some adjustment I am confident it can.

Role, Mandate, and Purpose

The Office of the Police Complaint Commissioner is an independent agency established under the *Police Act* to ensure that complaints against municipal police in British Columbia are handled fairly and impartially.

There are 12 municipal police departments and three First Nation police services in British Columbia:

- ◆ Abbotsford Police Department
- ◆ Central Saanich Police Department
- ◆ Dididat First Nations Public Safety & Police Service
- ◆ Delta Police Department
- ◆ Esquimalt Police Department
- ◆ Kitasoo Xiasas Public Safety Department
- ◆ Oak Bay Police Department
- ◆ Nelson City Police Department
- ◆ New Westminster Police Service
- ◆ Port Moody Police Department
- ◆ Saanich Police Department
- ◆ Stl'atl'imx Tribal Police Service
- ◆ Vancouver Police Department
- ◆ Victoria Police Department
- ◆ West Vancouver Police Department

Complaints concerning any one of the 12 departments and the Stl'atl'imx Tribal Police Service, or complaints about the policies of a department, fall under the mandate of the Office of the Police Complaint Commissioner.

Complaints regarding special provincial constables of the Dididat First Nations Public Safety and Police Service and the Kitasoo Xiasas Public Safety Department are subject to the Special Constable Complaint Procedure Regulation. The Director of Police Services Division of the Ministry of Attorney General has delegated that authority under the Regulation to the Police Complaint Commissioner.

The Office of the Police Complaint Commissioner provides an accessible way for the public to complain to an independent body about the conduct of any municipal police officer. The Office is established to ensure that the complaint process is conducted with impartiality and fairness, both to members of the public and to members of the municipal police forces.

Commissioner's Jurisdiction and Role

The Commissioner oversees the handling of all public trust, service and policy, or internal discipline complaints. The *Police Act* requires the Commissioner to receive a complaint from any person, orally or in writing. The Commissioner can

process a complaint under the public trust or service and policy provisions of the *Act* if:

- ◆ the Commissioner orders an investigation or a public hearing, or
- ◆ a person writes the complaint on a statutory Record of Complaint form (Form 1) and lodges it with the Police Complaint Commissioner or a disciplinary authority.

The Commissioner has statutory jurisdiction over complaints about municipal police officers and tribal police officers or about the services or policies of a municipal police department or designated tribal police service.

Commissioner's Mandate and Powers

The *Police Act* requires the Commissioner to:

- ◆ Oversee the handling of complaints about municipal police or police services or policies.
- ◆ Receive complaints from any source.
- ◆ Maintain a record of those complaints and their dispositions.
- ◆ Compile statistical information about complaints about municipal police or police services or policies.
- ◆ Report regularly to the public about complaints, complaint dispositions, and the complaint process.
- ◆ Inform and assist the public, complainants, police officers, police boards, and adjudicators with the complaint process and the handling of complaints.
- ◆ Periodically review the complaint process and make recommendations for the improvement of that process in the Annual Report.
- ◆ Establish procedures for mediation and guidelines for informal resolution of public trust complaints.

The *Police Act* permits the Commissioner to:

- ◆ Engage in or commission research on any matter relating to the police complaint process under Part 9 of the *Police Act*.
- ◆ Make recommendations to police boards about written policies or procedures that may have been a factor that gave rise to a complaint.
- ◆ Prepare guidelines about the receiving of complaints generally.
- ◆ Make recommendations to the director of Police Services or the Attorney General that a review or audit be undertaken to assist police in developing training designed to prevent recurrence of problems revealed by the complaint process.

- ◆ Make recommendations to the Attorney General for a public inquiry under the provincial *Inquiry Act*.
- ◆ Refer a complaint to Crown counsel for possible criminal prosecution of a police officer.

Obtaining Information and Records

The Commissioner may obtain information about a complaint by taking statements and interviewing the complainant and respondent officer and the officer's disciplinary authority. Further, the Commissioner may request records relating to a complaint from any person. The Commissioner may review the disciplinary decisions of the discipline authority of a respondent officer by:

- ◆ Ordering the disciplinary authority to provide various internal records and to provide additional reasons justifying the disciplinary or corrective measures proposed in a complaint disposition.
- ◆ Reviewing the respondent officer's Service Record of Discipline.
- ◆ Ordering a further investigation or a public hearing.

Investigations and Public Hearings

The Commissioner may order an investigation or a public hearing into police conduct whether or not a person lodges a complaint. The Commissioner may order an investigation into police conduct by:

- ◆ The police department responsible for the officer who is the subject of the investigation.
- ◆ An external investigation by another municipal or provincial police department.

The Commissioner may take statements and interview the complainant and respondent officer and the officer's disciplinary authority as stated above.

Discretion to Order Public Hearings

The Commissioner may order a public hearing when necessary in the public interest, with or without a request from either a complainant or respondent officer, considering relevant factors including, but not limited to:

- ◆ The seriousness of the complaint.
- ◆ The seriousness of the harm alleged to have been suffered by the complainant.
- ◆ Whether there is a reasonable prospect that a public hearing would assist in ascertaining the truth.
- ◆ Whether an arguable case can be made that:
 - there was a flaw in the investigation,

- the disciplinary or corrective measures proposed are inappropriate or inadequate, or
 - the discipline authority's interpretation of the Code of Professional Conduct was incorrect.
- ◆ Whether a hearing is necessary to preserve or restore public confidence in the complaint process or in the police.

The Complaint Process

Who can make a complaint?

Anyone who has concerns about the actions or comments of a municipal police officer or the service provided by a municipal police department may make a complaint.

How are complaints made?

A complaint can be made either orally or in writing, but before it can be processed under the *Police Act*, it must be made in writing, on an approved form (Form 1 Record of Complaint). The completed form can be delivered in person or by mail to the police department involved or to the Office of the Police Complaint Commissioner. If the complainant needs help in making a complaint, the Office of the Police Complaint Commissioner will help the complainant to fill out the form and will provide information about mediation, support services, and translation. After a complaint has been made, it can be withdrawn at any time.

What happens to the complaint?

The Office of the Police Complaint Commissioner forwards all complaints received to the appropriate police department for investigation. If the complaint is made at a police department, copies are to be forwarded to the Office of the Police Complaint Commissioner.

The police department investigating a complaint must report to the Police Complaint Commissioner at each stage of their investigation to advise the Commissioner of what is happening with the complaint. The complainant is also provided with ongoing information about his or her complaint.

Three types of complaints can be made: *Public Trust*, *Service and Policy*, or *Internal Discipline*. Depending on the circumstances described in the complaint, all complaints will be characterized as one of these types. The initial characterization of each complaint is made by the police department involved. The Police Complaint Commissioner then reviews the characterization and either confirms it or recharacterizes it.

Each type of complaint is processed differently.

Most complaints fall under the Public Trust category, and are processed in the following manner:

Public Trust Complaints

Public trust complaints affect the relationship between a police officer and the community and allege specific misconduct on the part of a police officer. A public trust complaint will be resolved in one of three ways:

1. Informal Resolution

Public trust complaints may be resolved informally by face-to-face discussions, by letter, by telephone, or with the help of a professional mediator. A complaint is resolved when both parties to the complaint (the complainant and the police officer) have given their signed consent, after which either party has 10 days to withdraw his or her consent in writing. Otherwise, the informal resolution is final and binding.

2. Summary Dismissal

A public trust complaint may be dismissed if there is no likelihood that further investigation would produce evidence to substantiate the complaint, if the complaint concerns a matter that happened more than 12 months ago, or if the complaint is deemed to be frivolous or vexatious. If the complainant disagrees with the department's decision to dismiss the complaint, he or she can apply to the Police Complaint Commissioner for a review of the police department's decision.

3. Investigation and Conclusion

A public trust complaint will be investigated if it is not informally resolved or summarily dismissed. The complaint will be investigated by the police department involved or may be referred by the police department or by the Police Complaint Commissioner to another police department to investigate.

The investigation into a complaint must be completed within six months after the date the approved complaint form was filed. The Police Complaint Commissioner may grant an extension of this time. If the complainant is unhappy with the results of the investigation, he or she may apply to the Police Complaint Commissioner for a public hearing.

Service or Policy Complaints

Service or policy complaints are complaints about the policies, procedures, and services provided by a municipal police department. An example of a service or policy complaint would be a complaint that insufficient police officers were stationed at a public event. The public trust process described above does not apply to service or policy complaints.

Service or policy complaints are the responsibility of each police board. The police board must advise the Police Complaint Commissioner and the complainant of the results, including what course of action, if any, was taken and must provide a summary of the results of any investigation or study.

The Police Complaint Commissioner cannot require a board to take any particular course of action regarding a service or policy complaint, but may make recommendations.

Internal Discipline Complaints

Internal discipline complaints concern police misconduct that is of concern to the officer's employer but does not affect the officer's relationship with the public. An example of an internal discipline complaint would be that a police officer did not secure his or her firearm properly in the police locker.

The principles of labour law apply to the investigation and processing of internal discipline complaints. The public trust complaint process does not apply.

In serious matters involving a police officer's duty to the public, the Police Complaint Commissioner is likely to recharacterize internal discipline complaints as public trust complaints.

Public Hearings

The *Police Act* empowers the Police Complaint Commissioner to order public hearings into complaints.

At the conclusion of an investigation into a complaint, both the complainant or the respondent police officer may request a public hearing.

If the respondent police officer has received a disciplinary measure more severe than a verbal reprimand, he or she has an automatic right to a public hearing on request.

If the complainant requests a public hearing, the Police Complaint Commissioner must determine if there are grounds to believe the hearing is necessary in the public interest.

The Police Complaint Commissioner may also arrange a public hearing without having received a request from either the complainant or the respondent police officer if the Police Complaint Commissioner believes that the public hearing is necessary in the public interest.

The Commissioner will consider the following factors before making the decision whether to arrange a public hearing:

- ◆ The seriousness of the complaint.
- ◆ The seriousness of the harm done.
- ◆ Whether a public hearing is needed to discover the truth.
- ◆ Whether there was a flaw in the investigation done by the police department, the measures proposed are inappropriate or inadequate, or the discipline authority's interpretation of the Code of Professional Conduct was incorrect.
- ◆ Whether a public hearing is necessary to restore or preserve public confidence in the complaint process and in the police.
- ◆ Whether the allegation is a "disciplinary default" under the Code of Professional Conduct Regulation.

Once the Police Complaint Commissioner has determined that the public hearing is in the public interest, the Commissioner must appoint an adjudicator to preside over the hearing. Associate Chief Justice Dohm of the Supreme Court of British Columbia nominates a retired justice from the Court of Appeal, the Supreme Court, or the Provincial Court of British Columbia. The Police Complaint Commissioner then appoints that individual as Adjudicator for the purposes of that particular public hearing.

The Commissioner appoints counsel to present to the adjudicator the case relative to the alleged discipline defaults respecting a public trust complaint. The counsel appointed by the Commissioner may call any witness who, in the

Commission counsel's opinion, has relevant evidence to give, whether or not the witness was interviewed during the original investigation. Commission counsel may also introduce into evidence any record, including any record of the proceedings, concerning the complaint up to the date of the hearing.

At a public hearing the respondent officer may examine or cross-examine witnesses, and the complainant and respondent may make oral or written submissions, or both, after all the evidence is called. The complainant and respondent may be represented by private counsel or an agent at the public hearing. A public hearing is open to the public unless, on the application of the complainant or respondent, the adjudicator orders that some or all of the hearing be held in private to protect a substantial and compelling privacy interest.

The adjudicator must decide if the alleged disciplinary default has been proven on the civil standard of proof. The civil standard of proof is "*By a fair preponderance of the evidence*" (Blake's Law Dictionary).

If a disciplinary default is so proved, the adjudicator may impose any disciplinary or corrective measure that may be imposed by a disciplinary authority, or may affirm, increase, or reduce the disciplinary or corrective measures proposed by the disciplinary authority.

Once a decision has been reached at the public hearing, the only appeal available to that decision is to the Court of Appeal on questions of law only.

The rules governing public hearings and Office of the Police Complaint Commissioner policy on ordering a public hearing can be found on the OPCC web site at www.opcc.bc.ca.

The Police Complaint Commissioner ordered two public hearings in 2000. Both of these public hearings were ordered in the absence of a request from a complainant or a respondent police officer.

In each case, the Police Complaint Commissioner determined (under s. 60(4) of the *Police Act*) that he had grounds to believe that a public hearing was necessary in the public interest.

PH00-01 Victoria Police Department

Allegations against a Victoria police constable arose as a result of concerns raised by employees at a Victoria photographic shop in September 1999. The officer had taken film in for developing that contained several photographs of a naked woman who appeared to be unconscious. A number of the photographs focused specifically on the woman's genitals, with the photographer arranging her body into disturbing positions. Police investigation revealed that the photographs were taken by the constable while he was on vacation in Greenland. As Victoria city police completed their investigation into the matter, the Greenland authorities were made aware of the complaint.

When police interviewed the woman in the photographs, she was shocked to learn that the photographs had been taken. She stated that while she had consented to have intercourse with the respondent officer, she gave no consent for the taking of such photographs. The internal investigation report concluded that there was sufficient evidence to support allegations of improper off-duty conduct, as defined in s.16 of the Code of Professional Conduct Regulation.

The Commissioner determined that it was in the public interest to order a public hearing, noting specifically s.60(5)(e) of the *Police Act*, which mandates the Commissioner to consider "whether a hearing is necessary to preserve or restore public confidence in the complaint process or the police."

On 20 April 2000, the Police Complaint Commissioner concluded that a public hearing would be in the public interest and appointed Mr. Justice Stewart Enderton as adjudicator. On 4 October 2000, Mr. Justice Stewart Leggatt was appointed adjudicator.

This public hearing is set to commence in May 2001 on Vancouver Island.

PH00-02 Vancouver Police Department

On 4 March 1998, a group of police officers entered the residence of J.D., authorized by a court-ordered telewarrant, to investigate the premises. The officers placed three men inside under arrest, taking them to a police station where they were processed and ultimately released. In the subsequent criminal proceedings charging the accused men with drug offenses, a voir dire was held to determine the admissibility of the evidence gathered in the search.

At trial, J.D. testified that when he returned to his residence the doorway had been boarded over and he had to remove the boards to gain entry. Photographs he had taken for presentation to ICBC had been torn up and thrown on the floor. The film in one of his cameras had been removed and exposed. In another camera he found that the police had taken photographs apparently unrelated to their investigation. He further testified that a quantity of his liquor had been poured out, and that shaving cream had been sprayed on the bathroom mirror, on the toilet, and on the bathroom walls. The investigating police officers were called to give evidence and generally denied any participation in these alleged acts.

In his ruling on the voir dire, the trial judge excluded the evidence obtained in the search and directed a judicial stay of proceedings. The judge was extremely critical of the police officers' testimony, pointing to numerous clear inconsistencies and questionable statements. The judge found J.D.'s evidence of police wrongdoing to be well supported by other evidence, concluding that the police actions on the scene were "in flagrant disregard and entirely inappropriate for police officers engaged in an investigation of this nature." He went on to state

that "The flagrancy of the conduct is, in my view, exacerbated by the denials in court..."

On 19 January 2000, the Chief Constable of the Vancouver Police Department requested an external investigation by the Saanich Police Department into the conduct of the officers in question. After the investigation was completed the Chief Constable disciplined two of the six officers involved.

The Police Complaint Commissioner determined it was necessary in the public interest to order a public hearing. On 12 December 2000 a Notice of Public Hearing was issued naming all six police officers as respondents. The Honourable Kenneth J. Scherling, a retired judge of the Provincial Court of British Columbia, has been appointed as adjudicator.

The schedule for all upcoming public hearings can be found on the Commissioner's web site at www.opcc.bc.ca.

Two public hearings were concluded during the calendar year 2000.

PH99-01 Abbotsford Police Department

On 3 January 1999, six members of the Abbotsford Police Department Emergency Response Team (ERT) executed a search warrant for drugs at a residential dwelling. At the time, there were 14 adults and 14 children (aged 2 weeks to 9 years) in the home. They were celebrating the birthday of the suspect's 7-year old son. The action resulted in multiple complaints alleging abuse of authority and discreditable conduct.

Police entered the home in full emergency response gear and carrying automatic weapons. During the raid, the family dog attacked one of the Emergency Response Team members and was subsequently shot in the presence of the children and adults. Some complainants stated that they were assaulted by police. Most of the adults and children were ushered outside, without coats and shoes, and made to wait. The children that resided at the house believed that the police had shot their father.

All of the adults that were present during the incident complained about the actions of the Emergency Response Team. Their complaints centred on the timing of the raid, the use of force on some of the males in the home, and the discharge of a weapon that killed the family pet, in the presence of children and adults.

On 14 January 1999, the Police Complaint Commissioner ordered an external investigation into those complaints. Chief Constable Grant Churchill of the West Vancouver Police Department was appointed as the discipline authority. The investigation was conducted by Chief Constable Peter Young of the New Westminster Police Service, with the assistance of Professional Standards officers Sgt. Phil Eastwood (NWPS) and Sgt. Dave Bingham (WVPD).

In response to requests for a public hearing made by several complainants, the Police Complaint Commissioner ordered a public hearing on 8 October 1999. That hearing took place before adjudicator Peter J. Millward, Q.C., a retired justice of the Supreme Court of British Columbia.

The public hearing commenced on 25 October 1999, and ran for 23 days. The adjudicator submitted his decision 10 July 2000. The decision of the adjudicator is currently being appealed by the respondents to the Court of Appeal for British Columbia.

The Adjudicator found that discipline was warranted in the case of two of the team members: the team leader and the member who discharged his weapon in the home.

The team leader was found to have committed the disciplinary default of discreditable conduct because, "he knew or ought reasonably to have known of the presence of children in the house." The team leader was also found guilty on a second count of discreditable conduct for failing to follow proper procedure with respect to surveillance of the home prior to the raid.

The team leader received a 5-day suspension without pay. He was also removed from the Emergency Response Team and directed to undergo special training designed to enable him to make more appropriate decisions and better evaluate intelligence information. The adjudicator also directed that after the completion of such training and the expiration of one year from the date of judgment, that the officer would be at liberty to reapply for membership in an Emergency Response Team.

The team member who discharged his firearm in the home, killing the family dog, was found to have committed the disciplinary default of improper use of a firearm. The Adjudicator found that the officer had discharged his firearm without reasonable grounds and when it was unsafe to do so. In his reasons, the Adjudicator stated that the officer gave no consideration to "assistance and a lesser means of force" as outlined in the Police Firearm Regulation.

The officer was also suspended from his position as a member of the Emergency Response Team. He was directed to undertake special training as to the exercise of judgment in circumstances where the discharge of a firearm may be called for. The Adjudicator added that he should not be considered for reappointment to the Emergency Response Team for one year.

On 7 April 1999, the complainant lodged a complaint alleging that two plainclothes Vancouver police officers had arrested him in a very rough manner, that both officers involved had refused to identify themselves, and that one of the officers had pointed a handgun at him, and had used profanity and derogatory language.

The Vancouver Police Department identified the officers involved and characterized the complaint as public trust. In an 8 October 1999 concluding report, the Vancouver Police Department apologized for the injuries sustained by the complainant, but indicated that the complaint was concluded as not substantiated and that Crown counsel had determined that criminal charges against the police officers were not applicable.

Legal counsel for the complainant wrote to the Police Complaint Commissioner requesting a public hearing.

The Commissioner noted that the complaint was serious: not only was there an allegation of unnecessary force, but one police constable used language which was clearly abusive and which was intended to demean the complainant on the basis of that person's sexual orientation.

Those allegations met the sufficient evidence test found in the policy. As there was absolutely no reference to a criminal record or criminal record search, the inference drawn by the Commissioner was that the complainant had no criminal record and the credibility of the complainant was not impeached.

On 13 December 1999, the Police Complaint Commissioner concluded that a public hearing into the conduct of one of the police constables was in the public interest. On 2 May 2000, the public hearing commenced before the Honourable Judge D.R. Holmes (retired) sitting as adjudicator.

The public hearing ran for 5 days, and the adjudicator delivered her findings on 6 July 2000.

In her decision and reasons, the adjudicator noted many contradictions in the complainant's testimony. The adjudicator also identified several discrepancies between the testimony of the respondent police officer and his partner. The adjudicator also noted omissions in the respondent police officers' testimony, noting that some of the differences could be attributed to the fact that the police officers did not make notes.

The adjudicator accepted the testimony of the respondent and found he had reasonable grounds to draw his gun to apprehend and detain the complainant; sufficient cause to arrest, detain, and search the complainant; and that the respondent had not used unnecessary force. The adjudicator was not satisfied that the use of the profane, abusive, or insulting language had been established on a fair and reasonable preponderance of credible evidence.

PH99-03 Vancouver Police Department

The 8 December 1998 deployment of the Vancouver Police Department against protesters during a speaking engagement by the Prime Minister at the Hyatt Hotel resulted in multiple complaints alleging abuse of authority.

An investigation into these complaints by the Vancouver Police Department was completed on 5 October 1999.

The Police Complaint Commissioner ordered a public hearing on 17 December 1999 before Mr. Justice K.C. Murphy, Q.C., a retired justice of the Supreme Court of British Columbia.

Counsel for the respondent officers petitioned the Supreme Court of British Columbia for an order quashing the public hearing, claiming an apprehension of bias in the appointment of the public hearing adjudicator. Mr. Justice Harvey of the Supreme Court quashed the hearing in August 2000.

The decision is being appealed by the Police Complaint Commissioner (*Jones & Doern v. Morrison*). The appeal is currently set to be heard by the Court of Appeal for British Columbia in June 2001.

Complaint Dispositions

The Police Complaint Commissioner is required by Section 50 of the *Police Act* to regularly prepare reports of the complaint dispositions made or reached during the reporting period.

This 2000 Annual Report contains a sample cross-section of summaries of citizen complaints that resulted in disciplinary or corrective measures during the period 1 January to 31 December 2000. A complete list of complaint dispositions can be found on the web site at www.opcc.bc.ca. **Note that with the exception of those cases that proceed to public hearing, the disciplinary measures imposed reflect decisions made by individual police departments that employ the officer(s).**

Possible disciplinary or corrective measures range from advice as to future conduct, to a verbal or written reprimand, to dismissal from the police department.

Advice as to future conduct is not a disciplinary measure under Section 19 of the Code of Professional Conduct Regulation 205/98 of the *Police Act*. However, the Commissioner views it as a corrective measure for the following reasons: a chief constable has found that the circumstances of a complaint warrant that action be taken to correct the behaviour of the subject officer; a senior officer gives the subject officer advice as to future conduct; and the discipline authority records the complaint and the advice in the subject officer's personnel record. However, the advice is not recorded in the subject officer's Record of Discipline because it is not disciplinary action as defined in the Code. All other disciplinary measures are recorded in the subject officer's Record of Discipline.

The following are examples of complaints that resulted in disciplinary or corrective measures in 2000.

Default:	Abuse of authority
Corrective measure:	Suspension without pay (3 days)

A road maintenance crew was working on the road, installing reflective markers. The crew was using a work truck with a flashing arrow board, directing traffic to the right. The complainant saw a truck coming up behind them. It started to go to the left. The complainant motioned for the truck to go around on the right. The truck proceeded to do so, but stopped beside the workers. The individual in the truck was a police constable. The constable started telling the complainant how they should be directing traffic and the complainant responded by telling the constable to just follow the arrow. Profanities were exchanged and the complainant asked for the constable's badge number. They continued

to argue. The constable reached for something at his side and proceeded to spray the complainant with pepper spray. A complaint was lodged against the constable.

The Chief Constable concluded that the constable's use of pepper spray was not justified. He found that the disciplinary default of abuse of authority was substantiated and imposed a three-day suspension of duty without pay on the constable. The Chief Constable took into account several factors in his decision:

- ◆ The severity of the constable's actions.
- ◆ That there was no doubt that the constable was at fault.
- ◆ The need to communicate to the constable that a police constable must be able to stand above a verbal confrontation with citizens and not use any form of unjustifiable force.

Default:	Improper off-duty conduct (one constable)
Corrective measure:	Reduction in rank for a period of 6 months Ordered to take professional counselling Write an apology and explanation of his actions
Default:	Discreditable conduct (two constables)
Corrective measure:	Written reprimands

An off-duty constable entered a bank in the early morning hours to use the ATM machine. A group of young boys were also present. The interaction between the two parties differs according to the statements given by complainant and respondent, but a verbal confrontation ensued. It ended as the group of youths departed on foot, and the off-duty constable left in his vehicle. The off-duty constable sought the help of two on-duty constables. A short time later, the youths were stopped by the off-duty constable and the two other constables, who were driving a marked police van. The off-duty constable took one of the youths aside and allegedly assaulted him while one of the other constables watched. The off-duty officer is also said to have assaulted another one of the youths, again witnessed by one of the on-duty constables. The youths were later sent on their way. They attended at the police department to file a complaint. They stated that the constables refused to identify themselves with their respective names and badge numbers.

The Chief Constable was satisfied that there was sufficient evidence to support the allegations made against the constables. The Chief Constable therefore found that the disciplinary default of improper off-duty conduct had been substantiated for the first officer and took the following disciplinary action:

- ◆ The constable was reduced in rank to second class constable for a period of 6 months.
- ◆ The constable was required to undertake appropriate professional counselling, which was to be approved and coordinated by the staff development section.

- ◆ The constable was required to make an apology and provide an explanation of his actions to the complainants.

The two on-duty constables received notations of written reprimands for the disciplinary default of discreditable conduct on their service records of discipline for their roles in the incident.

Default:	Discreditable conduct
Corrective measure:	Written reprimand
	Training in conflict resolution
Default:	Neglect of duty
Corrective measure:	Verbal reprimand

Police constables attended at a residence in response to reports of a disturbance. On attending they found three residents, two men and one woman, who appeared to be heavily intoxicated. The constable in question became involved in a verbal confrontation with one of the men. The man remained seated during the confrontation and did not pose an immediate threat, according to other constables present at the time. Nevertheless, while leaving the apartment, the constable shot off two blasts of pepper spray into the air, which would have settled in the area of the residents. This action came to the attention of a sergeant in the department who initiated an investigation into the incident.

The Chief Constable found the disciplinary defaults of discreditable conduct and neglect of duty to be substantiated and issued:

- ◆ A written reprimand for the disciplinary default of discreditable conduct.
- ◆ A verbal reprimand for neglect of duty.
- ◆ Required that the constable attend a course in conflict resolution.

The chief constable considered the following aggravating and mitigating factors in this decision:

- ◆ The improper discharging of pepper spray by a member is a serious abuse of authority.
- ◆ The constable had no prior issues of similar conduct in his service record nor were there any disciplinary actions in his record.
- ◆ It was felt that the constable was unlikely to repeat such behaviour and that the investigation itself may have a negative impact on the constable, who had a long record of employment with the police department.
- ◆ There was no acknowledgement by the constable of any responsibility on his part with respect to this incident.

- ◆ The departmental policy about the use of force and the discharging of pepper spray only applies to circumstances when a person is sprayed directly. There is no reference to the atmosphere of an enclosed area being contaminated.
- ◆ There had been no other cases of a similar nature with which to make comparisons and determine the appropriate corrective measures.

Default:	Improper off-duty conduct
Corrective measure:	Written reprimand

While off-duty and intoxicated, a police constable drove his vehicle across the road and onto the shoulder, hit a parked vehicle and left the scene of the accident. He was later apprehended in a neighbouring jurisdiction, with the help of police dogs, and was charged with impaired driving and hit and run.

When the police department that employed the constable was made aware of the incident, the chief constable of that department initiated an internal investigation into the matter.

The Chief Constable determined that the disciplinary default of improper off-duty conduct was substantiated and that disciplinary measures were warranted. A written reprimand was imposed on the constable. The Chief Constable noted three mitigating considerations in his decision:

- ◆ The constable's long and exemplary employment history.
- ◆ The constable's acknowledgement of responsibility in this incident.
- ◆ The impact of any disciplinary measures on him, his career, and his family.

Default:	Neglect of duty
Corrective measure:	Verbal reprimand

A police constable attended to a call in which a teenager had been physically assaulted by a parent. The constable interviewed the young person at the police station without any other adult present, and had the young person sign a document declining to charge the parent. The teenager was released into the care of social services and was taken to a local hospital emergency department.

Approximately one week later, the young person attended the police station with the other parent and advised the constable that they wished charges to be pursued. The constable submitted a report to Crown counsel and Crown requested a medical report of the injuries. The constable did not comply with the request until prompted to do so by a supervisor several months later. As a result, the summary conviction limitation period had expired and no charges were approved.

The discipline authority initially dismissed the complaint, but subsequently investigated and concluded that the constable had committed the disciplinary default of neglect of duty, for failing to "diligently and promptly" respond to the request from Crown counsel. A verbal reprimand was issued to the constable, and the document presented for signature to the young person was withdrawn from use by the department.

Default:	Discreditable conduct
Corrective measure:	Advice as to future conduct

During an arrest, a constable performed a routine search of an individual being taken into custody and transported him to the station in the police wagon. The individual being arrested alleged that the officer had fondled him during the search and he further alleged that he had suffered injury to his back during the ride to the police station, which the constable ignored.

The individual lodged an official complaint alleging discreditable conduct, which was investigated by the discipline authority.

The investigation revealed that the search performed on the complainant was thorough and professional. The discipline authority did, however, issue the constable advice as to future conduct with respect to her failure to report the complainant's alleged injury.

Educational Opportunities for Police

An integral part of the Police Complaint Commissioner's duties as set out in Section 50(2)(g) of the *Police Act* is to inform and advise discipline authorities and boards about the complaint process and the handling of complaints. As part of this educational mandate, the Commissioner assigned members of his staff to design, arrange, and host a number of training sessions for police officers and board members during the year. By the end of the year, more than 200 persons had attended OPCC-sponsored sessions.

Internal Investigation and the Police Act, 27 – 30 March 2000

This four-day course was designed in concert with professional standards officers from the municipal police departments in British Columbia. The course was intended to provide internal investigators with information on the *Police Act*, complaint investigations, mediation processes, relevant labour and criminal law, and other related information. Other police agencies were invited to attend the course. Officers from police internal investigation sections in Calgary and Winnipeg attended as well as representatives from the RCMP, tribal police, police unions, and other governmental organizations.

Topics included:

- ◆ An overview of the *Police Act*.
- ◆ Changes to the *Police Act* and changes in the complaint process.
- ◆ The role and powers of the Police Complaint Commissioner.
- ◆ Practice directives for informal resolution and mediation.
- ◆ A psychologist spoke on the subject of dealing with emotionally stressed individuals.
- ◆ A labour lawyer spoke about the differences between culpable and non-culpable conduct, the employer's "duty to accommodate," and the concept of "undue hardship."
- ◆ A criminal lawyer reviewed the relevant criminal law concerning police conduct and the investigation and collection of evidence.
- ◆ A forensic psychiatrist discussed several key psychological factors that are critical to understanding complainants and how they can best be served.
- ◆ An ethicist spoke about the ethical aspects of investigating complaints and the ethical basis of the complaint process. Several key ethical principles were defined and discussed as to how they could be implemented within policing itself and within the complaint/investigative process.

- ◆ An eminent police futures expert from the United States was the guest speaker for the final day of the course. His presentation included current issues in American internal affairs and police discipline.

Legal Seminar, 31 March 2000

This one-day seminar was intended to provide senior police managers and police board members with information about the latest legal trends in police internal investigations and in police conduct. Guest speakers included the counsel for the Winnipeg police, two Ontario police superintendents, and a local lawyer who specializes in police discipline issues. Topics included:

- ◆ Controversial issues in police internal affairs and discipline, mandatory disclosure requirements, proactive discipline tools, and early warning signs and systems.
- ◆ Recent trends regarding legal regulation of the police, the modes of public accountability of the police, civil liability, and human rights.
- ◆ A case study of a recent Ontario police incident, including the background, trial decision, and appeal.
- ◆ A focus on recent developments concerning the law of privilege, disclosing sensitive police documents (intelligence documents, for example), and the legal procedure involved in obtaining these.

Police Act Course for Supervisors, 6 – 7 June 2000

This two-day course, conducted in Victoria, was designed to provide information on a number of issues of interest to police supervisors and police board members who might be involved in the processing of police complaints. Speakers included a professor of criminal justice from Ontario, a Victoria labour lawyer, a Victoria professor, and the Police Complaint Commissioner. The presentations covered:

- ◆ *Police Act* procedures for dealing with public trust, internal discipline, and service and policy complaints, third-party complaints, procedural fairness, the roles and responsibilities of the different parties, police and oversight, and dealing with citizen complaints.
- ◆ Freedom of Information legislation as it relates to records originating from the OPCC, including disclosure, particularly disclosures to respondents and of officer misconduct.
- ◆ Informal resolution, personal conflict styles, individual styles of informal resolution, the incentive for settling disputes early, common environmental barriers to resolving problems, the role of mediation within the *Police Act* and how to apply it to the citizen complaint process.
- ◆ The latest information about the OPCC public hearing process and an overview of the current cases in British Columbia.

- ♦ An update and overview of labour law, including the distinctions between culpable and nonculpable conduct, the duty to accommodate, undue hardship, processes for dealing with a problem employee, corrective measures and the documentation required, and employee privacy.
- ♦ Police subcultures, the positive and negative aspects, the powerful influence they have on officers, and the role that managers play in these subcultures. The effect that a police subculture has on the citizen complaint process and on the fair handling of complaints.

A Symposium for Supervisors - The Police Act, 22 November 2000

This one-day course was an abbreviated version of the supervisors' course conducted earlier in Victoria for Lower Mainland supervisors. Highlights included:

- ♦ A spokesperson from the Information and Privacy Commissioner's Office spoke about the *Freedom of Information and Privacy Act* as it related to police complaint procedures and process and disciplinary records.
- ♦ A labour lawyer spoke on applicable parts of labour law and how those applied to investigation of internal complaints, including:
 - The distinction between culpable and nonculpable conduct, as well as the procedures that should be used in dealing with both types of conduct.
 - The duty to accommodate, the types of accommodation expected of employers, and the concept of undue hardship.
 - The process for dealing with a problem employee and the considerations that must be made in culpable investigations.
 - Corrective measures and the documentation required.
 - Employee privacy issues, including medical exams, searches of personal belongings, surveillance, and e-mail.
 - The arbitration process.

A Symposium on Current Issues in Police Internal Affairs, 23 November 2000

The police futures expert who presented to the internal investigators' course in March 2000 gave this one-day seminar. He was invited back to give a similar presentation on current issues in U.S. police internal affairs and discipline to senior police managers and board members. He spoke about the importance and the interdependence of policies/procedures, training, supervision, and discipline. He outlined some early warning signs and systems that could be implemented to bring officer misconduct to the attention of supervisors in its earliest stages, along with proactive disciplinary tools.

A Workshop for Internal Investigators and Union Agents – Labour Code Jurisprudence and the Investigation of Internal Complaints, 24 November 2000

The final course for the year was a one-day seminar specifically designed as an information session on labour law for union agents and internal investigators. A labour lawyer, who has also been regularly engaged by the OPCC for opinions on labour law issues, discussed *Labour Code* jurisprudence and investigation of internal complaints, including the standard of proof, documentation, reluctant witnesses, and interviewing the griever. Privacy and confidentiality issues relating to e-mail, employer property, employee property, drug/alcohol testing, medical testing, and surveillance were also covered.

Justice Institute of British Columbia and other Organizations

The Commissioner and some members of his staff are regularly requested to provide training seminars on the *Police Act* and complaint handling processes for courses conducted at the Justice Institute. The Commissioner and his staff have also provided training on the *Police Act* for municipal police departments and for the B.C. Federation of Police Officers.

The Commissioner has already begun to design further courses for police internal investigators and others in the police community for 2001.

Community Outreach

An integral part of the Police Complaint Commissioner's duties as set out in Section 50(2)(e) of the *Police Act* is to inform the public of the complaint procedures and the functions and duties of the Police Complaint Commissioner. As part of this educational mandate, the Commissioner has assigned members of his staff to design, develop, and implement a community outreach program for the Office of the Police Complaint Commissioner.

The goal of the Outreach program is to inform and educate the public about the complaint process and about the Office of the Police Complaint Commissioner.

Canadian Association for Civilian Oversight of Law Enforcement (CACOLE)

The B.C. Police Complaint Commissioner was elected President of CACOLE, the Canadian Association for Civilian Oversight of Law Enforcement, for a two year term commencing in 1999 and ending in 2001.

In September 2000, CACOLE held its sixth annual conference in Winnipeg, Manitoba.

In June 2001, CACOLE will hold a joint conference with the International Association for Civilian Oversight of Law Enforcement (IACOLE) in Quebec City.

CACOLE: President's Message

(excerpted from Communiqué Feb 2001)

Is there a *police culture* that impairs the ability of the police to achieve the high standards of ethical conduct expected of them?

The Wood Royal Commission from New South Wales addressed the issue of police culture:

"In response to the demands of the job, police officers are seen to develop a set of values, norms, perspectives, and craft rules which mold their conduct and which are often unrelated to, and may even contradict, the formal written laws, regulations and guidelines regarding police practice.

The strong sense of loyalty and the code of silence among police has frustrated many inquiries into police misconduct, including those conducted by police services themselves.

Nevertheless, the tendency in some accounts to use the concept of police culture as a primary tool for understanding police misconduct is overly simplistic, having regard to:

- ♦ the fact that there is no single police culture, significant differences existing, for example, between the cultures relevant for uniformed beat police, detectives, and senior command, and between different jurisdictions;
- ♦ the complexity of the relationship between cultural values and actions;
- ♦ the element of individual choice;

- ◆ the role of the individual member as an active and creative participant of that culture, it being inappropriate to regard each officer as a passive agent unable to contribute to change;
- ◆ the social, political, legal, and organizational context of policing in which the culture takes its place;
- ◆ the possibility of cultural change as well as resistance to change; and
- ◆ the fact that not every aspect of the culture is negative or supportive of misconduct."

The Wood Royal Commission, New South Wales, [Vol I] 1997, p 32.

"Police culture" is changing. What is needed? Mr. Justice Wood tells us what the police have said:

"The desire of police for recognition in respect of a job well done and of demonstrated integrity were well demonstrated in a survey conducted by the National Police Research Unit (NPRU) in 1996.⁴ The responses revealed a clear need for:

- clarification of the rules about ethical behaviour, and practical guidance as to their application;
- training in ethics which is relevant to the day-to-day job;
- support for, and recognition of, ethical behaviour;
- the end to a double standard in which senior officers are seen to ignore their own unethical behaviour, and are likely to be treated differently if suspected of it; and
- strategies to prevent punishment or ostracism of officers who bring unethical behaviour to light. "

The Wood Royal Commission from New South Wales, [Vol. I] 1997.

An external force is changing that culture in disclosure in criminal trials. In 1998, the case of *R. v. Scaduto* [1999] O.J. 1906 was decided by the Ontario High Court. In response to an application for disclosure of internal files of certain Toronto Metro police officers by Clayton Ruby, counsel for Scaduto, Justice Dombrot ordered production of:

"all records of investigations into complaints of misconduct against any of the officers involved in this investigation; and as for the remaining material, Crown counsel should review it and, if any or all of it meets the test of relevance in *Stinchcombe*, and is not privileged, bearing in mind the spirit of

⁴ NPRU, *Practical Ethics in the Police Service*, Ethics and Policing Study 3, Report Series No. 125.3, NPRU, 1996.

this judgment, then it also should be disclosed to the applicant as soon as practicable."

This case was amplified by *R. v. Altunamaz* [1999] O.J. 2262, *R. v. Fudge* [1999] O.J. 3121, and *Regina (City) Police Service v. McKay* (1999) 187 Sask. R. 294, *R. v. Ghorvei* (2000) 29 C.R. 5th 102, Ont. C.A.

This was analyzed by Joanne Mulcalhy in a paper for the Police Association of Ontario's conference, Police Employment in Y2K, entitled, "Access to a Police Officer's Personnel File by the Defence in Criminal Proceedings" (February 29, 2000).

Disclosure of prior police misconduct is required in the United States: *Brady v. United States*, 83 S.Ct. 1194 (1963), *Giglio v. United States*, 405 U.S. 150 (1963), *United States v. Bagley*, 473 U.S. 667 (1995), *Kyles v. Whitely*, 115 S.Ct. 1555 (1995).

Disclosure of prior police misconduct is required in England: *R. v. Edward* [1991] 2 All E.R. 266 (C.A.), *R. v. Maxime Edwards* (C.A.), *R. v. Cook* (1986) 84 Cr. App. R. 286 (C.A.), *R. v. Clancy* [1997] Crim. L.R. 290 (C.A.), *R. v. Busby* (1981) 75 Cr. App. R. 79 (C.A.).

The prior misconduct of police officers who are Crown witnesses in a criminal case can go to credibility and is therefore relevant information to the defense. It plainly includes some law enforcement personnel information. Determining the extent to which the police department or Crown counsel has an obligation to provide personnel and disciplinary information concerning officers who may testify is a complicated endeavour, not subject to simple generalizations.

The potential impact on policing is significant. It will directly affect how police do their jobs in the years to come.

The vast majority of police officers conduct themselves with the highest ethical standards. They do make integrity and ethics a part of their every day work. However, they must be vigilant of their colleagues who may stumble in the performance of their tasks. If that stumble is recognized, if officers come to assist fellow officers at that stage, serious misconduct can be avoided.

Staff Reorganization

The year 2000 saw significant staffing changes take place at the Office of the Police Complaint Commissioner.

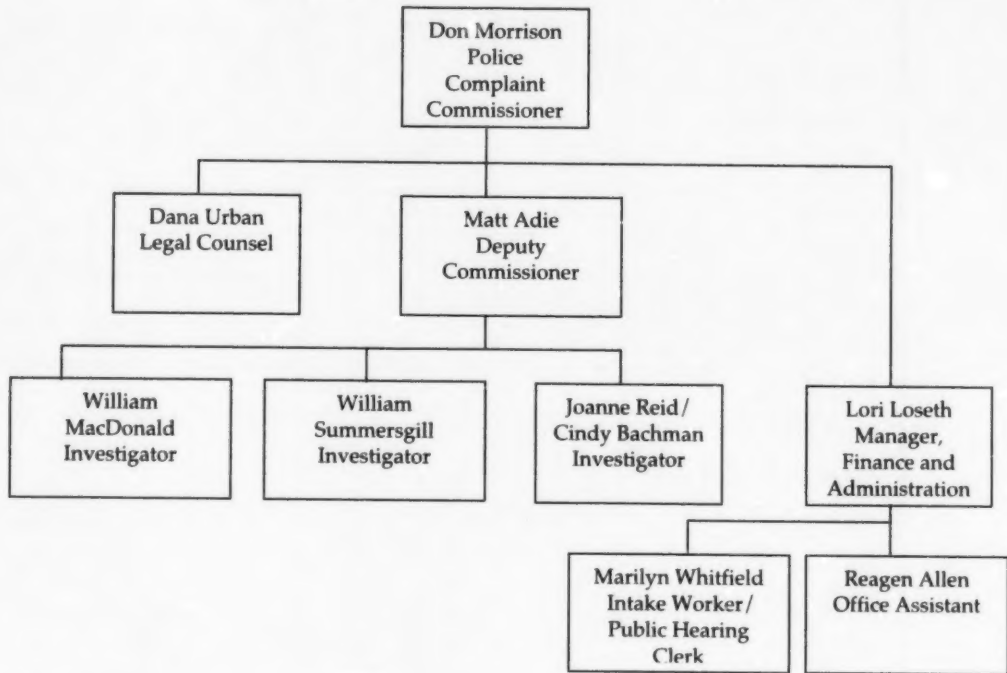
A third investigator position was added to the staff. In 2000, we had two individuals fill this investigator position through seven-month secondment opportunities: Joanne Reid from the Ministry of Social Development and Economic Security and Cindy Bachman from the Human Rights Commission.

The position of Registrar was eliminated in the summer of 2000 to meet the need for an in-house Legal Counsel position. Dana Urban, Q.C., was seconded to the Office of the Police Complaint Commissioner from the Ministry of Attorney General in September 2000 to act as Commission Counsel.

A new office assistant position was created and staffed in February 2000 to support the public hearing process.

A co-op student was hired in summer 2000 through the cooperative law program at the University of Victoria. Asja Serdarevic provided legal research and ongoing assistance to this office from May to August 2000. It is the intention of the Police Complaint Commissioner to continue the practice of hiring law students from the University of Victoria.

Organization Chart



Budget

Fiscal Year ending 31 March 2001

Number of staff	9
Salaries and benefits	\$703,000.00
Other operating expenditures	\$424,000.00
<u>TOTAL</u>	<u>\$1,127,000.00</u>

Statistics for 2000

	COMPLAINTS RECEIVED			COMPLAINTS CONCLUDED		
	2000	1999	1998 *	2000	1999	1998 *
Abbotsford	12	34	7	38	13	13
Central Saanich	5	1	3	3	1	4
Delta	15	17	4	16	11	8
Esquimalt	21	12	4	17	12	4
Nelson	5	6	4	6	8	4
New Westminster	15	24	8	15	21	10
Oak Bay	11	4	0	5	3	0
Port Moody	4	2	1	3	3	1
Saanich	36	31	7	35	18	8
Stl'atl'imx Tribal Police	2	**	**	0	**	**
Vancouver	173	198	84	202	156	116
Victoria	73	87	20	77	53	23
West Vancouver	27	13	6	22	15	11
TOTAL	399	429	148	439	314	202

* The OPCC came into existence 1 July 1998. Figures for 1998 represent complaints closed 1 July to 31 December 1998 only.

** Effective 1 December 1999, the Stl'atl'imx Tribal Police became a self administered police service in British Columbia. As a result, they are now subject to the provisions of Part 9 (Complaint Procedure) of the *Police Act* and fall under the mandate of the OPCC.

DISPOSITION OF CONCLUDED FILES

<i>Department</i>	<i>A</i>	<i>W</i>	<i>IR</i>	<i>SD</i>	<i>NS</i>	<i>RC</i>	<i>PHNP</i>	<i>SUB</i>	<i>RES</i>	<i>DISC</i>	<i>Total</i>
Abbotsford	1	2	2	4	5	3	13	2	0	6	38
Central Saanich	0	1	0	2	0	0	0	0	0	0	3
Delta	0	1	0	4	6	0	0	1	0	4	16
Esquimalt	0	0	1	7	0	1	0	0	0	8	17
Nelson 0		0	0	1	0	0	0	0	2	3	6
New Westminster	1	0	1	5	1	4	0	1	0	2	15
Oak Bay	0	0	0	2	2	0	0	0	0	1	5
Port Moody	0	0	0	3	0	0	0	0	0	0	3
Saanich	2	4	3	11	9	0	0	1	0	5	35
Stl'atl'imx Tribal Police	0	0	0	0	0	0	0	0	0	0	0
Vancouver	3	6	25	71	36	32	16	3	0	10	202
Victoria	1	3	28	25	15	1	0	0	0	4	77
West Vancouver	1	0	4	10	3	1	0	0	0	3	22
Total dispositions	9	17	64	145	77	42	29	8	2	46	439
Percentage of total	2%	4%	15%	33%	18%	10%	7%	2%	0%	10%	100%

A Abandoned.

W Withdrawn.

IR Informally resolved.

NS Not substantiated.

SD Summarily dismissed. The discipline authority can dismiss complaints for 3 reasons: there is no evidence that further investigation would reveal evidence of a disciplinary default; the incident occurred more than 12 months ago; or the complaint is frivolous and vexatious.

RC Reviewed and closed. For service and policy complaints and for non-lodged complaints. Upon receipt of the final response from the police board or the police department, the OPCC reviews the file and closes it.

PHNP Public hearing non-participant. Files where there were multiple complaints about one incident, a public hearing was ordered, but not all complainants chose to participate (the non-participants).

SUB Substantiated. The complaint was substantiated, but did not warrant disciplinary or corrective measures.

RES Resignation/retirement of officer.

DISC Disciplinary or corrective measures imposed.

TOTAL DISCIPLINARY OR CORRECTIVE MEASURES

	2000		1999		1998 ***	
Corrective measure	57 *		44		3	
Advice as to future conduct **	14	25%	17	39%	0	0%
Verbal reprimand	12	21%	8	18%	1	33%
Written reprimand	11	19%	12	27%	1	33%
Training	3	5%	0	0%	1	33%
Counseling	3	5%	0	0%	0	0%
Apology ordered	2	4%	0	0%	0	0%
Reassignment	3	5%	0	0%	0	0%
Reduction in rank	2	4%	2	5%	0	0%
Suspension (from 1-5 days)	7	12%	4	9%	0	0%
Dismissal	0	0%	1	2%	0	0%

* Forty-six files were concluded in which disciplinary or corrective measures were imposed, but 57 disciplinary or corrective measures were imposed. This difference reflects files where an officer received more than one disciplinary or corrective measure for the same incident; where more than one officer was involved and each officer received a disciplinary or corrective measure; or multiple complaint files concerning one incident, in which case each disciplinary or corrective measure imposed would only be counted once.

** Advice as to future conduct is not a disciplinary measure under Section 19 of the Code of Professional Conduct Regulation 205/98 of the *Police Act*. However, the Commissioner views it as a corrective measure for the following reasons: a chief constable has found that the circumstances of a complaint warrant action be taken to correct the behaviour of the subject officer; a senior officer gives the subject officer advice as to future conduct; and the discipline authority records the complaint and the advice in the subject officer's personnel record. However, the advice is not recorded in the subject officer's Record of Discipline because it is not disciplinary action as defined in the Code.

*** The OPCC came into existence 1 July 1998. Figures for 1998 represent complaints closed 1 July to 31 December 1998 only.

Mediators

Section 54.1(5) of the *Police Act* states that

"The discipline authority may, for the purposes of informally resolving a complaint under this section, do one or both of the following:

- (a) use any one or more means of alternate dispute resolution;
- (b) enlist the assistance of a neutral and independent person as mediator."

Section 54.1(8) of the *Police Act* requires the Police Complaint Commissioner to make available a list of neutral dispute resolution service providers and agencies to help complainants with the informal resolution process, and the person with whom a public trust complaint is lodged must provide that list to the complainant when the complaint is lodged.

Section 54.1(11) of the Act states:

"The complainant or respondent may ask the police complaint commissioner to appoint a mediator, if one has not already been enlisted under subsection (5)(b), and the police complaint commissioner may appoint a mediator if the police complaint commissioner considers it appropriate."

A list of neutral dispute resolution providers and mediators is available from the Office of the Police Complaint Commissioner.

List of Support Groups

Section 54.1(9) of the *Police Act* states:

"In the informal resolution process, a complainant may enlist the assistance of a support person of the complainant's choice or may ask the police complaint commissioner to appoint a support person for the complainant."

Section 54.1(10) of the Act defines the support person's involvement in the informal resolution process:

"A support person ... may (a) be present at any interview about the complaint and at any mediation or informal resolution, and (b) participate at any of those sessions with the consent of the respondent."

Section 54.1(8) of the Act requires the Police Complaint Commissioner to provide a list of support groups to help complainants with the informal resolution process.

The following agencies have agreed to be listed as support groups for this purpose. Complainants are not limited to this list in choosing a support group or person.

Inter-cultural Association of Greater Victoria

930 Balmoral Rd.	Telephone: (250) 388-4728
Victoria, B.C. V8T 1A8	Fax: (250) 386-4395
Contact: Jean McRae, Executive Director	

British Columbia Civil Liberties Association

425-815 West Hastings Street	Telephone: (604) 687-2919
Vancouver, B.C. V6C 1B4	
Contact: Murray Mollard, Policy Director	

S.U.C.C.E.S.S.

28 West Pender Street	Telephone: (604) 408-7238
Vancouver, B.C. V6B 1R6	
Contact: Joseph Lau, Program Director	

Vancouver Police and Native Liaison Society

324 Main Street,	Telephone: (604) 687-8411
Vancouver B.C. V6A 2T2	Fax: (604) 682-2967
Contact: Freda Ens, Executive Director	

Contact Names and Numbers

Office of the Police Complaint Commissioner
Suite # 900 - 1111 Melville Street
Vancouver, B.C. V6E 3V6
Phone: (604) 660-2385
Fax: (604) 660-1223
Web site www.opcc.bc.ca

Toll free outside of Vancouver:
Call Enquiry BC @ 1-800-663-7867
and ask to be connected to the
Office of the Police Complaint Commissioner.

Contact municipal police forces directly:

Abbotsford	(604) 859-5225
Central Saanich	(250) 652-4441
Delta	(604) 946-4411
Esquimalt	(250) 414-7105
Nelson	(250) 354-3919
New Westminster	(604) 525-5411
Oak Bay	(250) 592-2424
Port Moody	(604) 461-3456
Saanich	(250) 475-4321
Vancouver	(604) 717-3535
Victoria	(250) 995-7654
West Vancouver	(604) 925-7300

Complaints against the RCMP in British Columbia should be directed to:

Commission for Public Complaints against the RCMP
7337 - 137 Street, Suite 102
Surrey, BC V3W 1A4
Phone: (604) 501-4080
Fax: (604) 501-4095
Toll free: 1-800-665-6878

